HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7464 OF 2005.

Vinod Vishanji Dharod. ..Petitioner.

Versus.

Fedroline Anthoney Joseph
Andrades & Ors. ..Respondents.

Shri. R. D. Suryawanshi for the Petitioners.

Shri. S. G. Deshmukh for the respondent nos. 3 to 9.

Shri. Owen Manezes i/b Shri. R. P. Mudholkar for
respondent no.1.

CORAM: S.B.MHASE, J.

DATE : MARCH 16, 2006.

P.C.

1. Heard. This petition has been filed by the plaintiff in Special Civil suit No. No. 30 of 1998 which is pending on the file of the Civil Judge, Senior Division, Thane. In the said suit, there are nine defendants. Out of those nine defendants, defendant Nos. 3 to 9 and plaintiff have settled the matter and have presented the compromise Exhibit 83. It is to be noted that the defendant Nos. 1 & 2 are not parties to the said compromise. When this settlement was presented to the Court below on July 19, 2005, the Court has passed the order to the following effect :

> "The plaintiff and defendant nos. 3 to 9 have filed this Compromise Petition. The Plaintiff, Defendant nos. 3, 5, 6, 7 are personally present. Power of Attorney of defendant no. 4, 8 & 9 Miss. Suzzi is present. The parties are admitting the contents of compromise petition."

2. The petitioner is making a grievance that in view of this compromise the Court below should have passed a decree and such a partial passing of decree is permissible. He relied on Rule 3 of Order-XXIII of the Code of Civil Procedure, 1908. It is worthwhile to note that Rule-3 of Order- XXIII is to the following effect.

> "Compromise of suit.- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit"

3. It is to be noted that on the basis of the compromise or settlement between the parties a decree or part decree can be passed, but however, that settlement is expected to be between the parties to the suit. The

parties to the suit, in whole or in part, can compromise the suit, but when all the parties to the suit are not compromising the matter and some of the parties have compromised the matter then in that circumstances the decree cannot be passed because that decree cannot be said to be decree in the suit since all the parties are not parties to the said compromise. Under these circumstances, only way left out to the Court is to record the said compromise and keep it on record and consider the same at the time of finally disposing of the suit along with the contesting parties.

4. I find that the Court below has rightly taken on record the said compromise and have not passed the decree in terms of the compromise since defendant nos. 1 & 2 are not parties to the said compromise. No interference is called for. Petition is hereby rejected.

(S.B.MHASE, J.)